IN THE

Supreme Court Of The United States

OCTOBER TERM, 1956

NO. 926

J. S. EDMUNDS, J. L. EDMUNDS and J. W. EDMUNDS, Co-Partners Doing Business as J. S. Edmunds and Sons, *Petitioners,*

VERSUS

RALSTON PURINA COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The Order of the District Court denying the motion of Ralston Purina for judgment *non obstante verdicto* is found in the Joint Appendix in the Court of Appeals, pp. 15-18. The opinion of the Court of Appeals for the Fourth Circuit is reproduced in the Appendix to the Petition, pp. 17-27. It is reported as *Ralston Purina vs. Edmunds,* 241 F. 2d. 164.

JURISDICTION

The jurisdictional requisites are stated in the Petition.

QUESTIONS PRESENTED

1. Under *Erie v. Tompkins,* are Federal Courts governed by state decisions in determining the sufficiency of evidence for submission of a case to the jury?

2. In determining whether this case should have been submitted to the jury did the Court of Appeals apply a rule different from that established by the South Carolina decisions?

3. Was there sufficient evidence under applicable rules to justify the submission of this cause to a jury?

STATEMENT

J. S. Edmunds and Sons (Edmunds), turkey growers, sued Ralston Purina Company (Ralston), a feed manufacturer, for damages under a claim that Ralston furnished unpalatable and inedible feed of low nutritional value for use with Edmunds' breeder turkeys and as a result Edmunds suffered damages. Ralston's pleadings denied that its feed adversely affected the turkeys, denied that it was non-nutritional, inedible or unappetizing. The suit was brought in the United States District Court solely because of diversity of citizenship. No Federal question was at issue.

The District Court refused timely motions made by the defendant for a directed verdict and for judgment *non obstante verdicto* and entered judgment on a jury verdict in favor of the plaintiff.

On Appeal to the Court of Appeals for the Fourth Circuit, Ralston presented the position that the evidence was insufficient to raise a jury issue either on the question of liability or of damages and the position that there were other errors in the conduct of the case. The Court of Appeals reversed on the ground that the evidence was insufficient to show liability on the part of Ralston. Petition, p. 21. Therefore other questions were not reached.

REASONS FOR DENYING THE WRIT

I

Under Erie v. Tompkins, are Federal Courts governed by state decisions in determining the sufficiency of evidence for submission of a case to the jury?

It is our view that in passing upon the sufficiency of the evidence the Court of Appeals applied the same rule as that which is applied by South Carolina Courts. We present that argument in the second part of this brief. Assuming, however, that the test for weighing the sufficiency of evidence is different in the Federal Courts from that in the South Carolina Courts we submit that the Federal rule is controlling.

The matter was settled by this Court in 1931 in *Herron v. Southern Pacific Co.*, 283 U. S. 91. There a provision of the constitution of Arizona required that the defense of contributory negligence be submitted to the jury in every case and the question in the *Herron case* was whether this provision forbade the direction of a verdict on the ground of contributory negligence by a United States District Court sitting in Arizona in a diversity case. The unanimous opinion of the Court was that neither the Conformity Act nor the Rules of Decisions Act required such a result. Mr. Chief Justice Hughes said: "The controlling principle governing the decision of the present question is that state laws cannot alter the essential character or function of a Federal Court. The function of a trial judge in a Federal Court is not in any sense a local matter, and state statutes which would interfere with the appropriate performance of that function are not binding upon the Federal Court under either the Conformity Act or the 'Rules of Decisions' Act."

This announcement of the necessary independence of the Federal judiciary in the performance of judicial functions is not changed by *Erie Railway v. Tompkins*, 304 U. S. 64, because that decision merely applied the Rules of Decision Act to state judicial decisions as well as to state statutes. If a state statute was not binding upon the Federal Courts before *Erie Railway*, a state decision is not binding since.

So far as our research shows, this Court has not had occasion to reaffirm the principles of the *Herron case* since *Erie*, but numerous decisions by Courts of Appeal have done so: *Reuter v. Eastern Air Lines*, 226 F. 2d 443; *Henwood v. Wallace*, 159 F. 2d 263; *Lowry v. SAL Ry. Co.*, 171 F. 2d 625; *Basham v. City Bus Co.*, 219 F. 2d 547; *Ling v. Edenfield*, 211 F. 2d 705; *Davis Frozen Foods v. Norfolk Sou. Ry. Co.*, 204 F. 2d 839, (Cer. Den. 346 U. S. 824);

Gorham v. Mutual Benefit Health & Acc. Assn., 114 F. 2d 97 (Cer. Den. 312 U. S. 688); *Crockett v. U. S.*, 116 F. 2d 646 (Cer. Den. 314 U. S. 619); *Pierce v. Ford Motor Co.*, 190 F. 2d 910; *Boland v. Love*, 222 F. 2d 27; *McSweeney v. Prudential*, 128 F. 2d 660; and *Burcham v. J. P. Stevens Co.*, 209 F. 2d 35.

The recent decision of the Fifth Circuit Court of Appeals in *Reuter v. Eastern Air Lines*, 226 F. 2d 443, 445, is in point:

> Appellants insist that, under the rule prevailing in the Alabama courts, a scintilla of evidence of negligence requires submission of the issue to the jury, and that since *Erie R. Co. v. Tompkins*, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, a like rule should be required by the federal courts in diversity cases. Rules 38 and 39 of the Federal Rules of Civil Procedure provide for the kind of jury trial in federal courts that is preserved by the Seventh Amendment. The Erie doctrine is, of course, subservient to that constitutional provision. In diversity cases, therefore, even since Erie, the scintilla of evidence rule prevailing in Alabama and in some other states has no application in the federal courts.
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> In determining whether there is sufficient evidence to take the case to the jury, a federal judge performs a judicial function and is not a mere automaton. *Gunning v. Cooley*, 281 U. S. 90, 93, 50 S. Ct. 231, 74 L. Ed. 720. He must determine, "not whether there is literally no evidence, but whether there is any upon which a jury can properly proceed to find a verdict for the party producing it".

The decisions cited by petitioners will be found, when examined, to mean no more than that a Federal Court, in deciding whether to submit issues to a jury, must determine the applicable substantive law in accordance with state decisions. For example, if a state follows the "family purpose" agency doctrine in automobile negligence cases, a Federal Court in that state could not direct a verdict on the ground of want of agency if the family purpose was made out by adequate evidence. The cases cited do not purport to hold that a Federal judge is bound by any state rule or test in his ultimate decision of whether a jury issue is presented. The Fifth Circuit case of *General Acc. Fire & Life Assur. Corp.*

v. Schero, 160 F. 2d 775, cited at page 6 of the petition, should not be construed in support of any such proposition in view of the clear statement to the contrary in the later *Reuter case* by the same Court.

II

In determining whether the case should have been submitted to the jury did the Court of Appeals apply a rule different from that established by the South Carolina decisions?

Actually there is no real difference between the rule of the South Carolina cases and that of the Federal cases as to the sufficiency of evidence to go to a jury. The petitioners quote from *Odom v. Weathersbee,* 225 S. C. 253, 81 S. E. 2d 788, the statement that "a case should be submitted to the jury not only when the testimony is conflicting, but likewise when the inferences from it are in doubt". (Petition, p. 4). We can see no difference between this rule and that which the Court of Appeals recognized and applied, on the authority of several decisions of this Court, to the effect "that where the evidence supports conflicting inferences, the question is for the jury." (Petition, p. 27).

Again, the petitioners cite (Petition, p. 4) *Hiers v. South Carolina Power Co.,* 198 S. C. 280, 17 S. E. 2d 698, for the rule:

> The jury has the special prerogative to decide the facts if the evidence tends to sustain the reasonable probability of the manner or way relied upon by the plaintiff even if the injury might have occurred in one of a dozen ways.

The Court of Appeals held (Petition, p. 22) that the evidence here failed "to show a *probable* relationship between the claimed cause and the result complained of. It was effective, at most, to indicate that under each of the three alternative theories, there was a *possibility* that the feed *could* have caused the trouble." Is not that an application of the South Carolina rule?

The South Carolina Court does claim to follow the so-called "scintilla rule" but it has said many times that the scintilla of evidence on which a case should be submitted to a jury "must be real, material, pertinent and relevant

evidence, and not speculative and theoretical deductions." *Bell v. Bank of Abbeville,* 211 S. C. 167, 44 S. E. 2d 328; *Johnson v. Metropolitan Life Ins. Co.,* 206 S. C. 415, 34 S. E. 2d 757; *Soulios v. Mills Novelty Co.,* 198 S. C. 355, 17 S. E. 2d 869; *Turner v. American Motorists Ins. Co.,* 176 S. C. 260, 180 S. E. 55.

The South Carolina case of *Windham v. City of Florence,* 221 S. C. 350, 70 S. E. 2d 553, which was relied upon by the Court of Appeals (Petition, p. 22), took exactly the same view as was taken here in regard to the necessity of actual proof of causal connection between a defendant's acts and the damage which a plaintiff suffers:

> It is well settled under our decisions that where medical testimony is relied on to show a causal connection between an accident and a certain result, it is not sufficient for the doctors to say simply that the ailment in question "possibly" or "might have" resulted from the accident, but the medical experts must go further and testify at least that in their professional opinion the result in question "most probably" came from the alleged cause. *Branch v. Pacific Mills,* 205 S. C. 353, 32 S. E. (2d) 1; *Ashley v. South Carolina Highway Department,* 213 S. C. 354, 49 S. E. (2d) 505; *Burgess v. Belton Mills,* 215 S. C. 364, 55 S. E. (2d) 292.

III

Was there sufficient evidence under applicable rules to justify the submission of this cause to the Jury?

The opinion of Judge Sobeloff so carefully reviews the evidence and so cogently reasons that there is no jury question, we add only this brief word to show that the evidence did not establish the allegations of the Complaint. There is no evidence that the feed was contaminated, no evidence that it contained any toxic element. The analysis made at the instance of both plaintiffs and defendant show no lack of nutritional value. A. 19-20, 103, 131, 160, 213. Exs. 21, 28, 112. The literature on the subject shows that the condition of the turkeys could not have come from nutritional factors. A. 151. On the contrary there was ample evidence of disease which could have caused the trouble, A. 144, 154, 239, 250,

and of improper lighting practices which could have contributed thereto, A. 33, 158, 219, 221, 249. Ex. 55. Ralston was responsible for neither.

CONCLUSION

Ralston asks that the Petition for a Writ be denied.

Respectfully submitted,

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